

**Amendments to the Drawings:**

The attached sheets of drawings include changes to Figs. 5, 5A and 8. The sheets, which includes Figs. 5, 5A and 8, replaces the original sheet including Figs. 5, 5A and 8. In Figure 5 and 5A, element 44 has been changed to element 52. In Figure 8 element 18 has been changed to 58A.

Attachment:      Replacement Sheets  
                    Annotated Sheets Showing Changes

**REMARKS/ARGUMENTS**

Claims 19 - 25 are pending in the application. In response to the amendment document filed on 30 September 2008, a Notice of Non-Compliant Amendment was sent to Applicant dated December 31, 2008, indicating that the reason the amendment document was non-compliant was that the amended abstract was not on a separate sheet. In response, Applicant submits this document with the amended abstract on a separate sheet in order to satisfy the requirements of 37 C.F.R. 1.121 and thus make the amendment compliant.

Claims 19 - 25 are pending in the application. Claims 19 and 23 as well as the specification have been amended to correct a typographical error; where the word "resistor" was inadvertently used, it has been replaced with the correct term "restrictor." The Examiner will appreciate that the use of the word "resistor" is consistent with the language used in the application as filed. No new matter has been added. The objections and rejections present in the Office Action are addressed and discussed in turn below.

**The objection to the oath/declaration**

The Oath or Declaration was objected to as being defective because of the misspelling of the second inventor's name. This has now been corrected to read "Frederik" and the new Oath or Declaration has been re-signed and is attached hereto.

**The objections to the drawings**

The Office Action indicated that Applicant's drawings were objected to under 37 C.F.R. § 1.84(p) (5) because they included the reference characters --10-- and --22-- which were not mentioned in the written description. At the suggestion of the Office Action, Applicant has accordingly inserted reference

character 10 after "a conventional sausage making machine" in lines 15 and 16 on p. 3, and reference character 22 after "a conventional linker assembly" in lines 20 and 21 on p. 3.

The drawings were also objected to because they failed to show reference character 58A mentioned in the description. Following the suggestion of the Examiner, Applicant has changed "18" in figure 8 to --58A--. This change also addresses the objection mentioned in point 4 of the Office action.

In further compliance with the Office Action, Applicant has changed character "44" in fig. 5 and "44" in fig. 5A to --52-- to designate the passage --52-- above the restrictor element 44 as taught in the disclosure.

The objections to the specification/disclosure

The disclosure has been objected to because the title, abstract, and brief summary of the invention do not reflect that the claimed invention relates only to an apparatus, and because the status of the parent was not current. In order to comply with the Office Action, Applicant has amended the title, abstract, and brief summary of the invention to reflect only an apparatus as claimed, and has updated the status of the parent.

The specification has also been objected to for failing to provide proper antecedent basis for the subject matter claimed in claims 20, 21, 23, and 24. Applicant has amended the specification to include the subject matter of the above cited claims, in addition to inserting reference characters corresponding to claim terms shown in the figures. No new matter has been added.

The rejection of claim 22 under 35 U.S.C. § 112

Claim 12 has been rejected under the first paragraph of section 112 for failing to comply with the written description

requirement, because claim 12 contains subject matter not described in the specification, namely, the inclusion of the resistor element being 100mm from the discharge end. Applicant appreciates the Examiner's suggestion and accordingly has changed "100mm" to --10mm-- in order to reflect to the original disclosure as filed.

The rejection of claim 19 under 35 U.S.C. § 102(b) and § 103(a)

Independent claim 19 stands rejected both under 35 U.S.C. § 102(b) as anticipated by Humphrey (U.S. Pat. # 1,585,149) (Humphrey) and under 35 U.S.C. § 103(a) as obvious over Lyng (U.S. Pat. # 4,272,577) (Lyng) in view of Humphrey. Each will be addressed in turn below.

Independent claim 19 stands rejected as anticipated by Humphrey. Applicant respectfully disagrees with the rejection and traverses the rejection for the following reasons. Claim 19 requires, *inter alia*, "a resistor element in the tube to partially restrict the longitudinal movement of sausage emulsion therethrough so as to divide meat emulsion passing therethrough into separate longitudinal portions comprised of first portion of meat emulsion that passes, engages and is deflected to pass over the restrictor element, and a second portion that does not engage the restrictor element...". Humphrey does not teach a restrictor element that engages, deflects, and allows meat to pass over the element; and divides meat into separate longitudinal portions. Humphrey teaches a resistor element that has a rectangular cross sectional area (See Fig. 2) which creates a surface that is perpendicular to the flow of the meat through the tube. As a result, restrictor 12 of Humphrey would not allow meat to engage, deflect, and pass over it, because the perpendicular interface created between the resistor and the meat flow only serves to block the passage of meat. Humphrey

would only allow one longitudinal portion of meat to pass through the restrictor element 12. Therefore, because Humphrey does not teach a resistor element that either divides a meat emulsion into first and second longitudinal portions or engages and deflects meat allowing it to pass over the restrictor element, Humphrey does not anticipate claim 19.

As noted above, independent claim 19 requires in part "a resistor element in the tube to partially restrict the longitudinal movement of sausage emulsion therethrough so as to divide a meat emulsion passing therethrough into separate longitudinal portions comprised of first portion of meat emulsion that passes, engages and is deflected to pass over the restrictor element, and a second portion does not engage the restrictor element . . . ." Humphrey also does not teach this limitation because Humphrey does not identify restricting the movement of sausage emulsion, dividing meat emulsion or a first portion of meat emulsion that passes, engages and is deflected to pass over a restrictor element. Instead, Humphrey teaches a cellulosic material that is heated by any suitable means. (See lines 86-96). Because cellulosic material has a different consistency and properties than sausage emulsion there is no way to determine if the device and elements in Humphrey can restrict the longitudinal movement of sausage emulsion, divide meat emulsion, or have a first portion of a meat emulsion that passes, engages and is deflected to pass over a restrictor element. Thus, there is no teaching that the elements can accomplish the functioning required by the claim and a *prima facie* case of anticipation is not presented.

Additionally, Humphrey identifies his fuel bars as "compact" and "compressed" clearly identifying a single structure in the bars. Thus, Applicant asserts that the elements of Humphrey cannot divide meat emulsion passing

therethrough into separate longitudinal portions as is required by the claim. Thus, again this limitation is not met and Applicant respectfully requests the anticipation rejection be withdrawn.

Applicant additionally asserts that the deflection requirement of claim 19 is not met by Humphrey because the compression and heating of cellulosic material as taught by Humphrey to a solid state will immobilize the fibers in the material such that the orientation of the fibers is not flexible. Humphrey does not identify any orientation of the cellulosic material that would result in flexible fiber such that the fibers could be deflected to provide a specific shape. In the present invention the specific orientation sought for is to realize a preferred shaping of the sausages in a subsequent heating process while the heating already takes place during the Humphrey's compression. Thus, the deflection and shaping of the present invention is not realized by Humphrey and again anticipation is not presented.

Independent claim 19 also stands rejected as obvious over Lyng in view of Humphrey. Applicant respectfully asserts that the above rejection does not constitute a *prima facie* case of obviousness because both the Lyng reference and the Humphrey represent non analogous art and should not be considered in an obviousness analysis. The reference relied upon by the Examiner must either be in field of the inventor's endeavor or reasonably pertinent to the specific problem with which the inventor was involved. In re Deminski, 796 F.2d 436, 442 (Fed. Cir. 1986). The subject matter of claim 19, in addition to that of Applicant's disclosure as a whole, is directed to an apparatus for curving sausage links. (See Pages 1-2, Background & Brief Summary of Invention). Neither the disclosure of Lyng nor Humphrey is directed to the art of food preparation/production

or the field of endeavor of sausage production. Lyng, in contrast, is within the field of endeavor of ski production, specifically directed to a plastic composite waxless ski base. (Col. 2, lines 9-42, see also Lyng, generally). The disclosure of Humphrey is directed toward the production of cellulosic fuel, consisting of, *inter alia*, sawdust, straw, and shavings. (Page 2, lines 1-7, see also Humphrey, generally). Thus, neither Lyng nor Humphrey is directed toward nor discloses the art of food preparation/production or the field of endeavor of sausage production.

Furthermore, neither the Humphrey reference nor the Lyng reference is pertinent to the Applicant's problem. The Federal Circuit has clarified how to determine whether a reference is reasonably pertinent to the particular problem in which the endeavor was involved as follows:

[a] reference is reasonably pertinent if ... it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem. ... If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem. ... [I]f it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.

In re Clay, 966 F.2d 656, 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992). (Emphasis added); See also, MPEP § 2141.01(a). According to the Applicant's specification, the purpose of the present invention is to curve sausage links by creating two longitudinal sections of meat emulsion, one having linear fibers, and the other having fibers of random orientation which thereby cause

the sausage links to curve. (See Page 1, Background of Invention) In contrast, the purpose of Lyng is "to provide a composite material for a waxless ski base, which upon wear presents and maintains a pattern" by utilizing directionally oriented particles, formed by creating a composite matrix "whereby the particles are obliquely oriented in the plastic matrix relative to the intended gliding surface of the base" in order to provide a unidirectional friction coefficient, be resistant to wear, and grip the skiing surface when slid backwards. (Col. 2, lines 9-20, 40-42, Abstract) Furthermore, the purpose of Humphrey is not to create curved cellulosic material, it is directed to "a die in which the cellulosic material may be bound together to form a compact fuel by subjecting the cellulosic material to. . .heat and pressure" with the choke block 12 compressing the material as it passes through passage 14. (Page 2, lines 34-38, page 3, lines 10-20)

The Applicant's reference has a different purpose as compared to that of the Lyng reference and the Humphrey reference. Specifically, the Applicant's reference is for curving sausage, whereas the Lyng reference is for creating a waxless ski base which is resistant to wear and has good gliding properties, and the Humphrey reference is directed toward compressing cellulosic material for fuel. Therefore, Lyng and Humphrey solve a different problem than the claimed invention. Consequently, one skilled in the art would have less motivation or occasion to consider the references cited by the Office Action. Because the references relied upon in the Office Action are not in the field of the inventor's endeavor and are not reasonably pertinent to the specific problem with which the inventor is involved, the Lyng and Humphrey references are not analogous and should not be considered in an obviousness

analysis, and Applicant respectfully requests that the obviousness rejection be withdrawn.

Applicant additionally asserts that Humphrey teaches away from the claimed invention. A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path the Applicant took. In re Gurley, 27 F.3d 551, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994). Humphrey teaches to produce a "compact fuel" (e.g. page 1, lines 26-27) by forcing the cellulosic material to choke such that a "desired pressure is obtained" (page 1, lines 93-94) in combination with heating resulting in a "compressed stick of fuel" that can subsequently be "sawed or otherwise broken" (page 2, line 18). The solidification of the cellulosic material leads away from the effects sought for by the present application; to handle separate longitudinal portions of meat such that fibers in the different portions are differently oriented. Specifically, as discussed above the shaping of the sausage is significant in the present invention and having a device that produces the end result of a solid cellulosic material is undesired. In this manner, Humphrey teaches away from the desired result of Applicant's invention. Thus, one skilled in the art would be led in a direction divergent from the path taken by the Applicant when using Humphrey and thus there is no reason for one skilled in the art to combine Humphrey with Lyng to arrive at the claimed invention. For this reason Applicant asserts that claim 1 presents non obvious subject matter and respectfully requests the rejection be withdrawn.

Dependent claim 23 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Humphrey. Applicant cannot agree as Applicant asserts that each and every limitation of claim 23 is

not taught nor rendered obvious by the Humphrey reference. Claim 23 in part requires "the device of claim 19 wherein the restrictor element engages a bottom portion of the hollow tube, and has a concave arcuate surface on a top surface thereof." Humphrey does not teach this limitation and instead teaches choke block 12 having a recess 13 that restricts passage 14 from the top. Thus, Applicant believes the rejection is overcome and respectfully requests allowance of claim 23.

Claims 24 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Humphrey in view of Carrow (USPN 3,815,637). Applicant asserts that Carrow is non analogous art and there would be no reason for one skilled in the art to consider Carrow to combine it with Humphrey to arrive at the claimed invention. Specifically, Carrow is directed towards a means and device for controlling thermo plastic flow. (Col. 1, lines 1-6). Applicant's device is in the field of endeavor of an apparatus for making sausage links, (Pages 1-2 Background and Brief Summary of the Invention). These fields of endeavor simply are not related.

The Carrow reference also is not directed toward the problem or purpose of Applicant's disclosure. Again, the purpose of the present invention is to curve sausage links by creating two longitudinal sections of meat emulsion, one having linear fibers, and the other having fibers of random orientation which thereby cause the sausages to curve. (See page 1, Background of the Invention). In contrast Carrow is directed toward solving problems dealing with creating thermo plastic sheets with considerable width that is uniform. (Col. 1, lines 10-35). Thus, the problems would appear to be opposite of one another wherein Applicant is attempting to curve a sausage link using a solution of random orientation whereas Carrow is attempting to flatten a thermo plastic sheet by ensuring the

sheet is uniform. Thus, not only is Carrow not directed toward a similar problem or similar purpose and thus not analogous but additionally teaches a solution that teaches away from Applicant's reference. Therefore, Applicant asserts that Carrow would not be considered in an obviousness analysis and even if it were, there would be no reason to combine it with any reference to arrive at Applicant's device. For these reasons Applicant further considers claims 24 and 25 to contain allowable subject.

CONCLUSION

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200.

All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



Timothy J. Zarley  
Reg. No. 45,253  
ZARLEY LAW FIRM, P.L.C  
Capital Square  
400 Locust Street, Suite 200  
Des Moines, IA 50309-2350  
Phone No. (515) 558-0200  
Fax No. (515) 558-7790  
Customer No. 34082  
Attorneys of Record

TJZ/WRT/jlk